

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

ANGELA HARRELL,)
)
Plaintiff,)
)
v.) CIVIL ACTION
) FILE NO. CV521-4
WALMART STORES EAST L.P. d/b/a)
WALMART SUPERCENTER and)
REDDY ICE, LLC)
)
Defendants.)

NOTICE OF REMOVAL

Defendant WALMART STORES EAST L.P. petitions for removal of the action herein from the Superior Court of Coffee County to the United States District Court for the Southern District of Georgia, Waycross Division and respectfully shows the Court the following:

1.

Plaintiff filed the above-styled civil action in the Superior Court of Coffee County, Civil Action File No. SUV2020000619 on November 17, 2020. Attached as Exhibit "A" are copies of all process, pleadings, and orders filed in that action known to Defendant.

2.

Undersigned counsel for Plaintiff conferred with counsel for Reddy Ice, LLC on January 6, 2020 and confirmed that co-defendant Reddy Ice, LLC agrees and consents to the removal of this action and that Reddy Ice, LLC has no members who are Georgia residents who would prevent removal on the basis of diversity jurisdiction.

3.

Plaintiff's Complaint alleges that she was injured in a slip and fall accident at the Walmart Supercenter located at 1450 Bowens Mill Rd SE, in Douglas, Coffee County, Georgia. (Exhibit "A", Plaintiff's Complaint, ¶12).

4.

Plaintiff filed suit in Coffee County, Georgia, based on the location of the accident. (Exhibit "A", Plaintiff's Complaint, ¶1).

5.

Defendant removes this case as this Court has diversity jurisdiction over this action under 28 U.S.C. § 1332, which requires (a) complete diversity of citizenship between the parties and (b) an amount in controversy exceeding \$75,000.

6.

The parties are citizens of different states. Based on reasonable inquiry and belief, Plaintiff is a Georgia citizen. (See Exhibit "C" Accident Report showing

Plaintiff's Address.) Defendant Walmart, Inc. is a corporation formed under the laws of the State of Delaware. (See Exhibit "D": Amended Certificate of Authority to Transact Business). Defendant Reddy Ice, LLC is a Limited Liability Corporation organized under the laws of the state of Texas. (See Exhibit B: Certificate of Authority to Transact Business). Neither Defendant has any members or partners that are Georgia residents. Consequently, complete diversity of citizenship exists between the parties. *See* 28 U.S.C. § 1332(a)(1).

7.

Plaintiff's Complaint alleges that "As a direct and proximate result of Defendants' negligence, Plaintiff suffered physical and mental injuries, including but not limited to, bodily injuries, permanent impairment and damages, past, present, and future pain and suffering, mental anguish, loss of enjoyment of life, and other damages, for which she respectfully requests recovery in an amount to fully compensate her for said injuries and damages in the enlightened conscience of a fair and impartial jury. (Exhibit "A" Complaint ¶13).

8.

Plaintiff's Complaint does not state the amount of damages sought. Paragraph 15 of the Complaint states that Plaintiff has incurred special damages "well in excess of \$50,000" and that those medical expenses "continue to increase"

but does not identify the amount of special damages claimed. (Exhibit “A” Complaint).

9.

28 U.S.C.A. § 1446 provides “if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” The Eleventh Circuit has found that “responses to request for admissions, **settlement offers**, and other correspondence between parties can be ‘other paper’ under 28 U.S.C. § 1446(b).”). In determining amount in controversy, “[t]he definition of ‘other paper’ is broad and may include any formal or informal communication received by a defendant.” Lambertson v. Go Fit, LLC, 918 F. Supp. 2d 1283, 1285 (S.D. Fla. 2013).

10.

On September 2, 2020, Plaintiff’s counsel sent a Demand Letter (attached as Exhibit “E”) demanding payment of \$90,000 pursuant to the Unliquidated Damages Act (O.C.G.A. §51-12-14).

11.

On November 4, 2020, undersigned counsel for Defendant spoke with counsel for Plaintiff and made an initial settlement offer. Plaintiff’s counsel

informed counsel for Defendant that Plaintiff would not settle the case for less than \$90,000, that Plaintiff was unwilling to negotiate any settlement lower than \$90,000, and that Plaintiff's counsel would be seeking damages for attorneys' fees at \$500 an hour for Defendant's failure to pay the \$90,000 demanded on September 2, 2020. (Exhibit "F": Declaration of Leslie Becknell.)

12.

Plaintiff filed a separate suit for damages on this same incident against Walmart Inc. which has been removed to this Court, and is styled as "Angela Harrell, Plaintiff, v. Walmart Inc., Defendant, Civil Action File No. 520-cv-00138-LGW-BWC, (hereinafter the "First Harrell Action".) Counsel for the parties have conferred and have agreed to present a Consent Motion and proposed Order consolidating this action with the First Harrell Action.

13.

On September 8, 2020, in the First Harrell Action, Plaintiff responded to Defendant's initial discovery requests stating that Plaintiff alleges she suffered a disc protrusion at L4-5 as a result of the slip and fall accident at Walmart and will need physical therapy and medial branch blocks "that will be a lifelong process". (Exhibit G: Plaintiff's Responses to Defendant's Interrogatories #30). Plaintiff denied have any similar injures prior to the incident. (Exhibit G: Plaintiff's Responses to Defendant's Interrogatories #31). Plaintiff identified \$52,891.42 in

medical expenses to date, noting that she was collecting additional information and medical expenses and would supplement that amount. (Exhibit G: Plaintiff's Responses to Defendant's Interrogatories #34). In counsel's November 4, 2020 telephone conversation, counsel for Plaintiff notified undersigned counsel that Plaintiff would be having additional treatment, including additional branch blocks, and that her medical expenses were expected to significantly increase. (Exhibit F, Declaration of Leslie Becknell.)

14.

Consequently, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 (a), 1441, and 1446 because (a) complete diversity exists between the parties to this action and (b) the amount in controversy is in excess of \$75,000.00.

15.

This removal action is timely because it is filed within 30 days of the date that counsel for Walmart and counsel for Reddy Ice conferred, and counsel for Reddy Ice (A) confirmed that it consented to this removal and (B) that Reddy Ice had no members that are Georgia residents that would destroy diversity. That conference took place on January 6, 2021. Until that conference took place, the diversity status of Reddy Ice, LLC was not known to counsel for Walmart.

16.

By service of a copy of this Notice of Removal as evidenced by the Certificate of Service attached, Defendant gives notice of such removal to Plaintiff and Defendant Reddy Ice, LLC as required by 28 U.S.C. § 1446.

17.

A true and correct copy of this Notice of Removal will be filed with the Clerk of Superior Court of Coffee County, Georgia as required by 28 U.S.C. §1446(d). (Exhibit "H").

Wherefore, Defendant prays that the above-styled lawsuit be removed to the United States District Court for the Southern District of Georgia, Waycross Division, that this Court take cognizance and jurisdiction over this claim from the Superior Court of Coffee County, Georgia, and that this action shall proceed as removed and under this Court's jurisdiction under 28 U.S.C. § 1332.

Respectfully submitted, this 13th day of January, 2021.

DREW, ECKL & FARNHAM, LLP

/s/ Leslie P. Becknell

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CERTIFICATE OF FONT COMPLIANCE

Counsel for Defendants hereby certifies that the forgoing has been prepared with one of the font and point selections approved by the Court in LR 5.1(B): Times New Roman (14 point).

This 13th day of January, 2021.

DREW, ECKL & FARNHAM, LLP

/s/ Leslie P. Becknell

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing *Notice of Removal* upon all parties to this matter by filing with the Court's CM/ECF system, which will automatically e-mail notification of same and by US Mail to the following counsel of record:

Brad W. Thomas
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This 13th day of January, 2021.

DREW, ECKL & FARNHAM, LLP

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